

## BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint by FLORIDA DEPART- )  
 MENT OF NATURAL RESOURCES against )  
 ST. GEORGE ISLAND UTILITY CO, LTD. )  
 in Franklin County regarding refund )  
 for water meter hookups )

DOCKET NO. 890355-WU  
 ORDER NO. 21451  
 ISSUED: 6-26-89

The following Commissioners participated in the disposition of this matter:

MICHAEL McK. WILSON, Chairman  
 THOMAS M. BEARD  
 BETTY EASLEY  
 GERALD L. GUNTER  
 JOHN T. HERNDON

ORDER DENYING MOTION TO DISMISS

BY THE COMMISSION:

On March 10, 1989, the Florida Department of Natural Resources, ("DNR"), filed a complaint against the St. George Island Utility Company, Ltd., ("SGI"). On March 21, 1989, SGI filed a Motion to Dismiss DNR's complaint. On April 17, 1989, DNR filed a response to Motion to Dismiss and Request for Oral Argument.

The prehearing officer adopted the recommendation of the Director of the Division of Legal Services that the request for oral argument be granted. Oral argument was conducted at the agenda conference when the parties were given the opportunity to address the Commission regarding the Motion to Dismiss.

The Complaint alleges that SGI, in a contract with DNR, agreed to reimburse DNR for monies advanced to extend a water main to the state park on the island. This contract was filed with this Commission on December 20, 1978 and administratively approved as a developer's agreement. The Complaint further alleges that SGI's failure to reimburse these advances amounts to a double recovery for the expense of extending the water main.

SGI's motion urges dismissal of the DNR complaint in that DNR has pursued a civil action in Circuit Court seeking recovery on the same basis as the Complaint filed with the Commission. The motion further asserts that two conflicting decisions could result if DNR is authorized to pursue two actions simultaneously.

DNR's response to the motion to dismiss states that DNR's complaint involves both a contractual dispute which is to be enforced in Circuit Court and a dispute regarding a service availability charge which is enforceable by this Commission. The response asserts that there cannot be a conflict between the holding of this Commission and the Circuit Court in view of the "preemption doctrine" recognized in Hill Top Developers v. Holiday Pines Service Corporation, 478 So. 2d 368 (Fla. 2d DCA 1985), Rehearing denied November 20, 1985.

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For the purposes of a Motion to Dismiss, all of the facts alleged in the Complaint must be considered as true. Hammonds v. Buckeye Cellulose Corp., 285 So.2d 7 (Fla. 1973). The facts alleged in DNR's complaint state that a utility regulated by this Commission has violated the terms of a service availability contract approved by this Commission. Pursuant to Section 367.011, Florida Statutes, this Commission has exclusive jurisdiction over regulated utilities with respect to its authority, service, and rates. Pursuant to Sections 367.101 and 367.121(1)(a), Florida Statutes, the Commission's responsibilities include approval of charges and conditions for service availability. Section 367.121(1)(g), Florida Statutes, authorizes this Commission to exercise all judicial powers, issue all writs, and do all things necessary or convenient to the full exercise of its jurisdiction and the enforcement of its orders and requirements. Rule 25-30.550, Florida Administrative Code requires Commission approval of developer's agreements. Rule 25-30.560, Florida Administrative Code, establishes procedures for disputes regarding developer's agreements. Therefore, we find that this Commission has jurisdiction over the matters at issue.

SGI asserts that our jurisdiction is barred in that DNR has elected to pursue a civil action to enforce its claim in Circuit Court for Franklin County. It argues that the Complaint should be dismissed in that concurrent proceedings in court and before this Commission could result in conflicting judgments or rulings. However, the appellate court's decision in Hilltop Developers v. Holiday Pines Service Corporation, 478 So.2d 368 (2nd DCA 1985), supports a different conclusion.

In Hilltop, a Commission regulated utility sued a developer/customer for nonpayment of a plant expansion charge. The developer counter-sued to recover a portion of said charge it had previously paid. The appellate court held that the trial court lacked jurisdiction to grant judgment for the regulated utility absent prior approval of the plant expansion charge by this Commission.

A basis of the Court's decision is the "preemption doctrine". As stated by the Court:

It is plain beyond any doubt that in formulating Chapter 367, the Legislature desired exclusive jurisdiction to rest with the PSC to regulate utilities....The trial court, by asserting its jurisdiction and awarding (the developer) a judgment, literally cast itself in the role of the PSC. It is by honoring the jurisdictional exclusivity of the PSC that the very collision which has occurred here between an administrative agency and the judiciary would have been avoided.

The court concluded that, without a finding that the charge had been approved by this Commission, the trial court was without subject matter jurisdiction to grant the developer a judgment.

The instant case involves interpretation of a charge in a developer's agreement, as opposed to establishment of a charge. However, in view of the statutory provisions

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cited above and the procedures established by this Commission for handling such disputes (Rule 25-30.560, Florida Administrative Code), it is clear that the Commission has jurisdiction over the issue. Since the developer has filed a complaint, the Commission should process that complaint. The policy expressed in the Hilltop case, to defer to the Commission's jurisdictional exclusivity supports this conclusion.

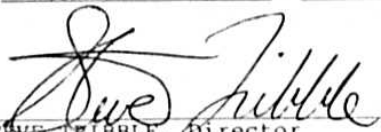
A further basis for the court's decision in Hilltop, the "primary jurisdiction doctrine," also supports a finding that Commission has jurisdiction over the subject dispute. Under this doctrine, judicial consideration is postponed pending administrative determination of the case so as to preserve the respective jurisdictions of the administrative agency and the trial court. Accordingly, the Hilltop court held that the trial court erred in not abating the trial proceeding until the Public Service Commission issued an order determining the justness and reasonableness of the plant facility charge.

For the above reasons, we find it appropriate to deny the Motion to Dismiss filed by SGI.

Wherefore, in consideration of the foregoing, it is

ORDERED by the Florida Public Service Commission that the Motion to Dismiss filed by St. George Island Utility Company, Ltd., is denied.

By ORDER of the Florida Public Service Commission,  
 this 26th day of JUNE, 1989.

  
 STEVE TRIBBLE, Director  
 Division of Records and Reporting

( S E A L )

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

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Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: 1) reconsideration within 10 days pursuant to Rule 25-22.038(2), Florida Administrative Code, if issued by a Prehearing Officer; 2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or 3) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or sewer utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.